

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDITH FERRARI,

Plaintiff(s),

No. C 09-2908 PJH

v.

**ORDER OF DISMISSAL FOR
FAILURE TO PROSECUTE
AND FAILURE TO SERVE**

U.S. BANK, N.A., et al.,

Defendant(s).

By order filed October 16, 2009, the complaint was dismissed as to defendants U.S. Bank, FCI Lender Services, and DSL Company, with several claims being dismissed with prejudice and others with leave to amend. Plaintiff was ordered to file the amended complaint no later than November 15, 2009, and she was warned that a failure to timely file the complaint or to properly amend the claims would result in a dismissal of all claims with prejudice. Additionally, by order dated June 29, 2009 the parties were ordered to attend a case management conference on October 15, 2009. At the request of the parties the conference was continued to November 19, 2009. Plaintiff failed to appear. Further, although the complaint was filed on June 29, 2009, plaintiff has still not filed a proof of service on the remaining defendants, even though more than 120 days have transpired.

The court having considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined that notwithstanding the public policy favoring the disposition of actions on their merits, the court's need to manage its docket and the public interest in the expeditious resolution of the litigation require dismissal of this action. In view of plaintiff's failure to comply with this court's order regarding amending her complaint or the order requiring her appearance at a case management conference, the court finds there is no appropriate less drastic sanction.

1 Accordingly, this action as to defendants FCI Lender Services, U.S. Bank, and DSL Service
2 Company is dismissed with prejudice pursuant to Fed. R. Civ. Pro. 41(b) for plaintiff's
3 failure to prosecute. The action as to defendants Frank Belleci and Sylvia Belleci,
4 individually and doing business as Tassajara Valley Loans, is dismissed without prejudice
5 pursuant to Fed. R. Civ. Pro. 4(m) for failure to serve.

6 SO ORDERED.

7 Dated: November 19, 2009



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PHYLLIS J. HAMILTON
United States District Judge